

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, SONITPUR,
TEZPUR**

Present : **Smti Chitrali Goswami, A.J.S**

Judicial Magistrate First Class,

Sonitpur, Tezpur

GR case no: 1703/2014

under Sections - 279/337/427 of Indian Penal Code

State

vs

Benudhar Saikia

Advocate for the Prosecution

Mr AK Sahani.

Advocate for the Defence

S.K Singh and T.Ghosh.

Date of recording evidence

13.07.2018, 29.04.2019,
05.12.2019, 07.01.2020,
14.02.2020.

Date of hearing argument

25.01.2021

Date of judgment

08.02.2021

JUDGMENT

1. The prosecution case in a nutshell is that the instant case was initiated on the lodging of an ejahar by informant Md Abdul Hekim wherein he alleged that on 16.07.14 at around 7.30 am he along with his driver were on their vehicle Tata Ace Zip bearing registration no AS -12-AC-0371 was coming to Tezpur from Nagaon, Solong. At that time near Bhojkuwa Chapori, Tezpur his vehicle was hit by an Alto car bearing registration no AS 01 AK 1322 coming from the opposite direction. His vehicle was at a standstill position at the time of the incident.

Due to the rash and negligent driving of the Alto driver few of the fish traders in his vehicle sustained grievous injuries and his vehicle fell down and was badly damaged. Hence the case.

2. On receipt of the ejarah Tezpur PS case no 814/14 dated 29.11.16 under Sections 279/338/427 of Indian Penal Code was registered and investigated by SI Malindra Kumar Borah. On finding sufficient materials charge sheet was submitted vide no 84/17 dated 28.02.17 under Sections - 279/337/427 of Indian Penal Code against accused Lt Col Benudhar Saikia.

3. On receipt of charge sheet, cognizance of offences under Sections – 279/337/427 of Indian Penal Code were taken as per the provision prescribed under Section 190(1) (b) of Code of Criminal Procedure.

4. On appearance of the accused necessary copies were furnished to him as per the provision of Section 207 of the Code of Criminal Procedure. The particulars of the offences under Sections - 279/337/427 Indian Penal Code were explained by my Learned Predecessor-in-office to which he denied and decided to stand for trial.

5. During the course of trial, the prosecution side to prove its case examined 6 (six) witnesses including the informant. After closure of prosecution evidence, statement of defence of the accused under Section 313 of the Code of Criminal Procedure was recorded by stating the incriminating materials found against him to which his plea was of total denial. Defence, however, did not adduce any evidence in their support.

6. I have heard the arguments of both sides at length and gone through the case record and evidences thoroughly. Defence relied upon the judgment of State of M.P versus Mishrial (Dead) and Others { AIR 2003 SC 4089} Perused the said judgment.

7. Points for determination:

- (i) Whether the accused person on 16.07.2014 at about 7.30 am drove his vehicle on a public way in a rash or negligent manner endangering the life of the informant and thereby committed an offence punishable under Section 279 of the Indian Penal Code?
- (ii) Whether the accused person on 16.07.16 at about 7.30 am caused hurt to informant by driving his vehicle so rashly and negligently as to endanger human life or personal safety and thereby committed an offence punishable under Section 337 of the Indian Penal Code?
- (iii) Whether the accused person on 16.07.16 at about 7.30 am caused damage to the property of the informant to the amount of Fifty rupees or upwards and thereby committed an offence under Section 427 of the Indian Penal Code?

DISCUSSIONS

8. In his examination-in-chief, PW1 Abdul Hekim deposed that he is the informant of the instant case. He has recognised the accused. The incident occurred 4 years back around 7.30 am in the morning. On the day of the incident, he was travelling on his Tata Jeep with fish from Solong to Tezpur. The vehicle was driven by Habibur Rehman. At that time, an Alto car driving in high speed from the opposite direction hit his vehicle at Bhojkhowa Chapori. As a result of the collision, the Alto car fell down from the road and was damaged. Habibur Rehman sustained injuries and was taken to Kanaklata Civil Hospital. There were other people at the place of occurrence. The delay in lodging the ejahar was due to his involvement in medical treatment. He knows what is written in the ejahar.

Exhibit 1 is the FIR and Exhibit 1(i) is his signature.

9. In his cross-examination, PW1 deposed that Habibur Rehman now resides in his own house at no 3 Borguri, Nagaon. Previously, he had also gone to Kerela. On the day of the incident, the accused had lodged a case against Habibur Rehman. But police did not know that he was in the hospital. There were four other people in the vehicle excluding himself and Habibur Rehman along with fish. It was a small vehicle for carrying goods in the backside. And in the front there was one seat along with the driver seat. In the backside there were drums and on top of the drums four passengers were sitting namely Ijajul Haque, Imran Hussain, Ashadul and he does not know the name of one of the passenger. He was sitting along with the driver. He is illiterate and does not know to drive. He does not know the person who wrote the ejahar. Habibur Rehman was admitted for 2-3 days in Tezpur Civil hospital.

10. Both the Tata jeep and Alto were taken to the police station. He went to the police station next day morning. There the police explained him for making a MVI report and he was in the police station for an hour. The police had given a written requisition for MVI and on the same day MVI was done. He does not know when the MVI was done for the Alto car. Habibur Rehman did not accompany him on the day of the accident, the following day or at the time of MVI. His car was pulled by a crane but he does not know how the Alto car was bought. His vehicle was driving at a normal speed. The accident took place when his vehicle was hit when it slowed down for halting. It is not a fact that on 18.07.14 the FIR was lodged to conceal the investigation. He does not know to read the Exhibit 1 but it was read over to him. It was written there that his vehicle was hit when it was in standstill position.

11. In his examination-in-chief, PW2 Dr Bijoy Paul Das deposed that on 16.07.14, he was working as Medical and Health Officer-1 at Kanaklata Civil Hospital. On that day, in reference to Tezpur PS case, he examined one Imran Hussain, S/O Rashid Ali of village Borghuli. The patient was escorted by UBC (348) Pankaj Chutia. On examination, he found abrasion on the left cheek of size 2 cm x1 cm with pain in the right elbow and right knee.

In his opinion, the injury was fresh, caused by blunt object and simple in nature.

Exhibit 2 is the medical report of Md Imran Hussain and Exhibit 2(i) is his signature.

12. On the same day and same time, he also examined Md Habibur Rehman, S/O Mansur Ali, Age 24 years, Village- no 2 Borguli. The patient was escorted by UBC (348) Pankaj Chutia. On examination, he found small lacerated cut injury on the right leg of size 1 cm x 1 cm x 0.5 cm with pain in the right shoulder.

In his opinion, injury was fresh, caused by blunt object and simple in nature.

Exhibit 3 is the injury report of Md Habibur Rehman and Exhibit 3(i) is his signature.

13. On the same day and same time, he also examined Md Ajijul Islam, S/O Lt Asabuaddin, Village- Kacharigaon, Bhojkhuwa. The patient was escorted by UBC (348) Pankaj Chutia. He found lacerated cut injury on the right cheek of size 3 cm x 2 cm x 1 cm with complain of pain in the right leg and right side of the back.

In his opinion, injury was fresh, simple in nature.

Exhibit 4 is the injury report of Md Ajijul Islam and Exhibit 4(i) is his signature.

14. On the same day and same time, he also examined Md Karmuj Ali, 40 years, Male, S/O Lt Abdul Shahid, Village-Gutlong, P.O- Kaliabhomora and he was escorted by UBC (348) Pankaj Chutia. On examination, complain of pain over back with inability to walk following alleged RTA.

In his opinion, injury was fresh, simple in nature.

Exhibit 5 is the injury report of Md Ajjul Islam and Exhibit 5(i) is his signature.

15. In his cross-examination, PW2 deposed that he has not mentioned in the medical report the reason of the injuries of Imran Hussain, Md Habibur Rehman and Ajjul Islam. The patients have also not intimated him about the injuries sustained by them.

16. In his examination-in-chief, PW3 Mukleswar Rehman deposed that he knows the accused person. The incident occurred in the year 2014. He was coming from Solong in a bicycle carrying hatchlings about 8 am to Mission Chariali. The accident occurred in Bhojkhowa Chapori. He saw that the Tata jeep was hit by the Indica car. He was at a distance of approximately 50 metres. Traffic police came and asked him to stand as a witness. He forgot the name of the persons who were injured.

17. In his cross-examination, PW3 deposed that it is not a fact that he did not state before police he was in a bicycle at a distance of 50 metres. He does not know how many people were in the Indica car but there were 5-6 people in the jeep. The jeep can carry two persons in the cabin. The other people on the jeep carrying goods were sitting on top of the vehicle. He does not know where the other witness present today was sitting. He does not know who was driving the jeep and the Indica car at the time of the incident. It is not a fact that he did not witness the incident.

18. In his examination-in-chief, PW4 Ijajul Haque deposed that the informant is his father. He knows the accused. The incident happened in 2014 at about 7.30 am. He does not remember the date and time. He was on the backside of the Tata jeep coming to Tezpur from Saboni. At Bhojkhowa Chapori the Alto car came and hit the jeep from the side which was coming from the wrong direction. He and few of the traders travelling in the jeep were injured and taken to Civil Hospital.

19. In his cross-examination, PW4 deposed that the jeep is a small vehicle with a sitting capacity of two including the driver. The driver of his jeep was Habibur Rehman who stays at a distance of 5 kilometres from his place. There were 5-6 people sitting along with him in the backside. He does not know their names. His father was sitting along with the driver. The other car was coming from the opposite direction. He was standing and all others were sitting. When the Alto hit them, he jumped from the vehicle. There were 5-6 drums of carrying capacity of 20-30 kilograms. The space of the backside of the jeep is 6 feet x 4 feet. The drums were full of water. The driver of the jeep was working for us. It is not a fact that he has stated before police that the Alto car came in the wrong direction and hit them. He knows the driver of the Alto car but does not know his name. He does not know how many passengers were there in the Alto. He saw the driver of the Alto car on that day not prior or after.

20. In his examination-in-chief, PW5 Habibur Rehman deposed that he knows the informant but does not know the accused. The incident happened 6 years back. Their vehicle was coming from Nagaon to Mission Chariali when an Alto hit the vehicle as he heard.

Exhibit 6 is the seizure list and Exhibit 6(i) is his signature.

Exhibit 7 is the seizure list and Exhibit 7(i) is his signature.

21. In his cross-examination, PW5 deposed that he does not know what is written in Exhibit 6 and 7 wherein he put his signatures. He does not remember where his signatures were taken. He does not know the reason why his signatures were taken.

22. In his examination-in-chief, PW6/IO ASI Bhagaban Deka deposed that on 16.07.14 he was posted as an ASI in Traffic Branch, Tezpur. He received an information that at 7 am there took place an accident between a Magic van and an Alto car at Batabari vide GD entry no 722 dated 16.07.14. He went to the place of occurrence, prepared sketch map, recorded statement of witnesses.

He sent the injured persons for medical treatment. He seized both the vehicles and brought them to the PS. On 18.07.14 the written ejahar was lodged by Abdul Hakim. It was received and registered vide Tezpur PS case no 814/14 under Sections 279/338/427 Indian Penal Code vide GD entry no 863 dated 18.07.14. The accused was arrested on 18.07.14 and he was released on bail as it was bailable offences. After completion of investigation, he submitted charge sheet against accused Benudhar Saikia under Sections 279/337/427 Indian Penal Code.

Exhibit 6 is the seizure list and Exhibit 6(ii) is his signature.

Exhibit 7 is the seizure list and Exhibit 7(ii) is his signature.

Exhibit 8 is the extract copy of GD entry.

Exhibit 9 is the charge sheet and Exhibit 9(i) is the signature of Abdul Jalil, In charge of Traffic which he knows.

23. In his cross-examination, PW6/IO deposed that the accident occurred on 16.07.14. He recorded the statement of all the witnesses on the day of the incident including the injured, namely Abbas Ali, Mukteswar Rehman, Ijajul Hussain, Meenu Saikia, Md Ijul Islam, Md Hamaj Ali, Suraj Pratim Saikia and Abdul Hekim. It is true that on 16.07.14 all the statements were recorded and no statement was recorded after that. They received information from an unknown person that on 16.07.14 at 7 am an accident that took place between a Magic van and Alto car. This happened to be the first information resulting in the initiation of investigation. Exhibit 8 is the part of the charge sheet. So far he can remember there is a cross case on the same incident. He has in the service for 32 years and has investigated cross case earlier. He has been handed over FIR copy of Tezpur PS case no 806 along with copy of charge sheet, MVI report etc. on the same day there was GD entry no 722 dated 16.07.14 on which basis investigation was taken up. He opened the 2 CD while taking upon investigation and filed 2 separate charge sheet against both the drivers subsequently.

24. The charge sheets were submitted by SI Abdul Jalil. The charge sheet in the instant case is no 632/14 dated 13.10.14. Other charge sheet no in the connected case is no 631/14 dated 13.10.14. He did not record the statement of the accused of the Alto car Benudhar Saikia and driver of the Magic van Habibur Rehman. He had been again handed over the Tezpur PS case no 806/14 (GR 1681/14). The FIR of this case has been lodged by Lt Col Benudhar Saikia and he was given the charge of investigation. From the two different seizure lists, he recollected that the seizure list and the vehicles were seized from Benudhar Saikia and Habibur Rehman on 16.07.14. It is true that in spite of having opportunity he did not record their statements.

Exhibit B is the certified copy of FIR and Exhibit B (i) is endorsement by O/C In charge delegating the investigation.

Exhibit C is the charge sheet certified copy.

Exhibit D (1) and (2) is the 2 seizure list connected to the 2 vehicles.

Exhibit E (1) and (2) is the MVI report of the 2 vehicles.

25. Moreover PW3 Mukleswar Rehman did not state before PW6/IO that he was coming on a bicycle and he witnesses the accident from a distance of 50 metres. Moreover, PW6/IO did not ask where he was at the time of the incident. It is true that the Magic van was a goods carrying vehicle and has 2 seating capacity. There were many people on the rear side who sustained injuries as they were carrying basket of fish and also sitting there along with the fish. Solong is a big fish market. He did not enquire when the market opens and closes. The goods vehicle was on its way to Solong or coming from it was not enquired by him. It is not a fact that he has not investigated properly.

Decisions and reasons thereof:-

26. To bring home the offences under Sections - 279/337/427 Indian Penal Code it has to be proved that the accused by driving his vehicle in a rash or negligent manner on a public way endangered human life or personal safety of others and caused mischief amounting to damage of fifty rupees or upwards. PW1/informant in his ejahar has stated that his car was in a standstill position when the accused hit his vehicle. But in his cross-examination, he deposed that his vehicle was hit when it was about to slow down for halting. As such there exists contradiction as to the exact position of the informant's vehicle. Further PW3 did not state before I/O that he was coming on a bicycle and he witnesses the accident from a distance of 50 metres. The I/O also did not enquire where PW3 was at the time of incident. The goods vehicle of the informant was on its way to Solong or coming from it was not enquired by the I/O. Moreover, the vehicle of the informant as deposed by PW1/informant was a small vehicle for carrying goods in the backside. And in the front was one seat along with the driver seat. But on the day of the alleged incident in the backside there were drums and on top of the drums four passengers were sitting namely Ijajul Haque, Imran Hussain, Ashadul and the informant does not know the name of one of the passenger. As such carrying passengers in the backside which is a vehicle for carrying goods amounted to negligence on part of the informant.

27. As such the prosecution side has failed to prove that the accused person Benudhar Saikia by driving his vehicle in a rash or negligent manner on a public way endangered human life or personal safety of others and caused mischief amounting to damage of fifty rupees or upwards and thereby committed the said offences under Sections - 279/337/427 of the Indian Penal Code against the informant to warrant a conviction beyond reasonable doubt.

ORDER

In light of the aforesaid discussion, I hold the accused person namely, Benudhar Saikia is not guilty of offences under Sections – 279/337/427 of the Indian Penal Code. Hence, he is acquitted from the charges leveled against him. The accused person is set at liberty forthwith.

His bail bond is extended for a period of 6(six) months from the date of this order i.e. 08.02.2021 as per as Section 437(A) Code of Criminal Procedure.

The judgment is delivered in the open Court in presence of the accused person and their engaged Counsel.

Given under my hand and the seal of this court on this 08th day of February, 2021.

Typed by me,

(Smti. Chitrali Goswami), AJS
Judicial Magistrate First Class,
Sonitpur, Tezpur.

(Smti Chitrali Goswami), AJS
Judicial Magistrate First Class,
Sonitpur, Tezpur

APPENDIX

Prosecution witnesses :

PW1- Abdul Hekim

PW2- Dr Bjoy Paul Das

PW3- Mukleswar Rahman

PW4- Ijajul Haque

PW5- Habibur Rehman

PW6- ASI Bhagaban Deka

Prosecution Exhibits:

Exhibit 1 – Ejahar

Exhibit 2 – Medical report

Exhibit 3 – Injury report

Exhibit 4 – Injury report

Exhibit 5 – Injury report

Exhibit 6 – Seizure list

Exhibit 7 – Seizure list

Exhibit 8 – Extract copy of GD entry

Exhibit 9 – Charge sheet

Exhibit B – Certified copy of FIR

Exhibit C – Certified copy of Charge sheet.

Exhibit D(1) and (2) – Connected to the seizure list of two vehicles.

Exhibit E (1) and (2) - MVI report of the 2 vehicles.

Defence witness:

Nil

Defence Exhibit:

Nil

Court Exhibit:

Nil

(Smti Chitrani Goswami), AJS
Judicial Magistrate First Class,
Sonitpur, Tezpur